IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL WRIT PETITION NO.1869 OF 2004

Shri.Prashant M.Chavan ...Petitioner

vs.

The State of Maharashtra ...Respondent

Mr.Sameer Vaidya, for the Petitioner.

Mr.K.V.Saste & Gadkari, Addl.P.P. for the State.

Mr.V.T.Tulpule, for Complainant.

CORAM: A.M.Khanwilkar, J.

DATED: 23rd September,2004

P.C.:-

1. Heard Mr.Sameer Vaidya, Advocate for Petitioner, Mr.Gadkari, Addl.P.P. for Respondent-State and also Mr.Tulpule, Advocate for the Complainant. Rule. Rule made returnable forthwith by consent. Counsel for the respective opposite parties waive notice. As short question is involved, petition taken up for final disposal forthwith by consent.

2. Essentially two grievances are made in this Petition. The first grievance is that the Court below has proceeded to frame charge under Section

against all the accused and under Section 302 and 304 Part B of Indian Penal Code against Accused no.1 without offering any opportunity to the accused to be heard before framing of those charges. The second grievance is that the learned trial Judge was quite hasty in proceeding to frame charges, and prejudice will be caused to the Petitioner if the Petitioner is required to participate in the proceedings before the same Judge.

3. Having considered the rival submissions in so far as the first grievance is concerned, there can be no difficulty in accepting the same straight away because it is well settled that before framing of charge, accused should be heard by the Trial Court. That has not been done in the present case; and this position is not disputed by the learned Counsel appearing for the Respondent. In the circumstances, this petition should succeed for this reason alone.

4. However, in so far as the second grievance of the Petitioner is concerned, I find no substance. To my mind, the record does not per se

indicate that the concerned Judge has any bias against the Applicant. At best, it is possible to

say that, he committed an error in framing of charge without affording an opportunity of hearing to the concerned accused. Such mistake can be got corrected before the Superior Court and that by itself cannot be the basis to accede to the request for transfer of the case from the concerned Judge to some other Judge of the same Court. To that extent, the petition would fail.

5. In the circumstance, this Petition partly succeeds. The order passed by the Court below dated 9th September,2004, of framing of additional charges against the Petitioner, is set aside. It will be open to the trial Court to examine the matter afresh for framing of additional charges on the basis of materials already available, provided an opportunity of being heard is afforded to the concerned accused. All question in that behalf are left open.

6. Parties shall appear before the Trial Court on 4th October,2004 on which date the trial court may proceed with the matter or may fix some other date as may be deemed appropriate.

23.9.2004 (A.M.Khanwilkar,J)